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KEY TO ABBREVIATIONS

Cal. D. C. A.	California District Court of Appeals.
Kans. Sup.	Kansas Supreme Court.
Ky. C. A.	Kentucky Court of Appeals.
N. Y. App.	New York Court of Appeals.
N. Y. Sup.	New York Supreme Court, Special Term.
O. C. A.	Ohio Court of Appeals.
Okla. Sup.	Oklahoma Supreme Court.
U. S. C. C. A.	United States Circuit Court of Appeals.
U. S. C. C. P. A.	United States Court of Customs and Patent Appeals.
U. S. D. C.	United States District Court.
U. S. Pat. Off.	United States Patent Office.
U. S. Sup.	United States Supreme Court.
Wisc. Sup.	Wisconsin Supreme Court.

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DIGEST

I. TRADE-MARKS GENERALLY.

I. Nature of Trade-Mark Rights.

I. 1, § 1. *Character of Right.*

b. Basis of Right.

Trade-mark rights exist only in connection with some business. The owner of a trade-mark may not, like the proprietor of a patented invention, make a negative and merely prohibitive use of it as a monopoly. 532

I, 1, § 2. *Extent of Right.*

b. As to Goods.

Where appellant, before deciding on a particular blend for its "Twenty Grand" cigarettes, experimented with several blends and sold them under the said trade-mark, *held* that the fact was not important. 272

One who has established his mark upon one kind of goods may prevent another from using it upon another kind, if the latter is not too foreign to the first. 591

Plaintiff had for many years used the word "Universal" as a trade-mark on electric household appliances, but had never used it on refrigerators. Defendant and its predecessor had, beginning in the year 1924, used the words "Universal" and "Universal Cooler" on electric refrigerators, sold either as bare units or as complete with cabinets. Plaintiff first heard of defendant's use of the word "Universal" on refrigerators in 1926, and, after several mild protests to which defendant gave no heed, brought suit in June, 1934. *Held* that, inasmuch as plaintiff had permitted defendant to build up at great expense a large business in "Universal" refrigerators and had made no effective protest, it had no right to an injunction, particularly as it had consented to the use by defendant of the word "Cooler" in connection with the name "Universal." 591

I, 1, § 3. *Who May Have.*

b. Dealer.

It is well settled that one need not manufacture goods in order to acquire a valid trade-mark. 1

An importer of foreign-made goods who sells them in this country under his own trade-marks may so label his goods and advertise his business that the trade-marks come to indicate that the goods bearing them come from him, although not made by him. His monopoly of the trade-mark in this country, therefore, becomes complete. 236

I, 2. WHAT MAY BE A TRADE-MARK.

I, 2, § 2. *Mark of Patented Article.*

In the case of a patented article the patent of which has expired, the use of the patented name upon another's products is permissible only where no other term would give it meaning to the public. 148

Appellant, Simmons Hardware Company, acquired from appellee, The Christy Company, certain patents on safety razors and subsequently distributed a razor and blades manufactured thereunder by said appellee, bearing the trade-mark "Enders," which it later registered in the form of a facsimile signature. Appellant later organized the Enders Razor Company, Inc., which also sold razors and blades under a Christy patent. Appellant Simmons Company also since 1868 used as its trade-mark the words "Keen Kutter," which in 1906 it registered for razors and blades made under the Christy patents. After having sold razors made for them by The Christy Company from 1906 until 1933, the Simmons Company and the Enders Company contracted to buy same from another source, and The Christy Company thereupon continued making the same razors and blades as before and sold them in packages labeled "Original and Genuine 'Enders' (or 'Keen Kutter') blades made by Christy." *Held* that The Christy Company had a right to use the name "Enders" on its razors and blades manufactured under the patents, inasmuch as said word had become the generic name of the goods. 507

Neither the absence of a patent nor its complete invalidity will prevent a word from acquiring a generic meaning. Therefore, the fact that the name "cellophane" was originally applied to a product protected by a patent of doubtful validity *held* to have no bearing on the present trade-mark status of the word. 513

The word "cellophane" was coined by one Brandenberger in 1900 to indicate a transparent cellulose product which was later patented. Shortly after the first use of the word, it was employed, both by its inventor in his

patent specifications and by complainant company, as a descriptive term, to such a degree that a large portion of the purchasing public no longer identified the product with the DuPont Company, but understood thereby cellulose wrappings coming from any source. *Held* that the word "cellophane" had become *publici juris* to this class of purchasers. 513

I, 2, § 3. *Descriptive and Generic Terms.*
(See also p. xxix, *post.*)

The following words are *held* descriptive:

"Imperial," for whisky..... 67
"Prun-O-Wheat," for bread and other bakery products..... 408

A generic word may, through long association, come to acquire a secondary meaning, denoting origin or ownership, but the burden of proof is on its owner to prove that any marks have become synonymous to the buying public. 67

Where appellant began in 1922 to use the word "Nu-Enamel" as a trade-mark for its paint and similar products and has since developed a large business in goods bearing the mark, *held* that the name "Nu-Enamel" had acquired a secondary meaning as indicating appellant's products exclusively. 73

Appellee's claim that its use of the word "Imperial" as a trade-mark for whisky acquired a secondary meaning among American purchasers *held* unfounded, as purchases of the said whisky made by Americans in Canada were not in sufficient quantities to identify the liquor with appellee. 67

The following are *held* not to be descriptive:

"Old South," for whisky..... 1
"Veronal" and "Protargol," for pharmaceutical products..... 148
"Automatic," for a return post card..... 566

I, 2, § 6. *Proper Names.*

Held that the trial court was in error in holding that defendant's use of the President's name and portrait as trade-mark for his cigars was unlawful, the prohibition in such cases referring only to the right to register such indicia as a trade-mark. 157

Where plaintiff had used the name "Stetson" as a trade-mark for hats so long as to gain for the name a secondary meaning as identifying its hats

exclusively, the use by defendant Stephen L. Stetson Company, Ltd., of the words "Stephen L. Stetson" on linings and sweat bands of hats of its manufacture, also on labels an deontainers of same, *held* not infringement of the word "Stetson," but unfair competition. 187

Defendant, a German citizen inherited from its ancestors their right to use the name "Mumm" on champagne made by them in France under the name G. H. Mumm & Company. *Held* that, after sale of the latter's assets, trade-marks and good-will to plaintiff, defendant should be enjoined from the use of the name "Mumm" alone, but be permitted to use his full name "Mumm von Schwarzenstein" in a competing business. 371

The use by plaintiff and his predecessors of the word "Stetson" as a trade-mark for hats produced by them since 1865 *held* to have given the name a secondary meaning as indicating exclusively plaintiff's hats. 527

I, 3. Title to a Trade-Mark.

I, 3, § 2. *Assignment and Devolution.*

a. By Sale of Business.

Where appellants first used the words "Old South" to indicate beer brewed for them, first by the Eastern Beverage Corporation, which subsequently assigned to them all its right and title to the trade-marks and business good-will, and later brewed said beer in their own brewery, advertised and sold it under the said trade-mark in the states of Virginia, North Carolina, and South Carolina, *held* that said appellants had acquired an exclusive right and title to the trade-mark. The later use, therefore, by appellant company *held* an infringement, especially as the earlier use of the mark by appellants was known to them. 1

A manufacturer cannot make a valid assignment of his trade-mark and continue the manufacture or sale of the product on which the mark was used. 255

b. Recording Assignment.

A trade-mark may be assigned only in connection with the good-will of the business in which it is used. Under the Act of February 20, 1905, such assignments must be duly acknowledged and are void as against any subsequent purchaser, unless recorded in the Patent Office within three months from the date thereof. 133

Where an assignment, recorded in the Patent Office, of the trade-mark "Hekolith" was signed and acknowledged by an officer of the German assignor, but without certification that the assignment was made according to the laws of Germany, *held* that such assignment did not establish ownership to the said trade-mark in the plaintiff assignee. 235

Held that appellant's failure to record contract did not open the door to a *bona fide* purchaser to question its validity, inasmuch as the contract was not an assignment of the "Sun-Maid" trade-mark, but a contract limiting the right of the parties in its use. 256

I, 3, § 3. *Abandonment.*

Abandonment is a matter of intention and a compulsory non-user cannot be defined as intentional non-user. Hence, a manufacturer who, by the passage of the National Prohibition Act was compelled to cease use of his mark in this country cannot be said to have abandoned its mark. 47

The fact that appellant, after having adopted and used the notation "Floating Power" as a trade-mark for engine mountings failed to use said mark thereon during the period of one year, *held* not abandonment. 321

Plaintiff, an author and cartoonist, registered in 1915 the words "Raggedy Ann," the title of a cartoon feature originated by him, as a trade-mark for dolls. He made only a few sales of the goods thus marked in interstate commerce, having in 1918 sold all rights in the business and good-will to a Chicago publisher, who, in turn, after making a wide use of the trade-mark on dolls with plaintiff's consent, in 1934 assigned the trade-mark to plaintiff. Inasmuch, however, as plaintiff did not resume use of the mark in connection with the manufacture and sale of "Raggedy Ann" dolls and showed no evidence of ever intending to do so, he was *held* without right to enjoin the use by defendants of the words "Raggedy Ann" on dolls of their manufacture, which closely resembled the doll of plaintiff's illustrations. 532

I, 3, § 4. *Under Trading with Enemy Act.*

The sale to plaintiff of the good-will and trade-marks of a French company owned by German citizens and seized during the World War *held* to include trade-marks not only in France but throughout the world. 371

I, 3, § 6. *Forfeiture.*

One Louis Schwarz, doing business as United Blade Company, adopted as a trade-mark for razor blades the words "United Blades" in shield form and registered same in the U. S. Patent Office on May 27, 1930. In 1931 said Schwarz duly assigned said trade-mark and the good-will of the business to United Razor Blade Corporation, said assignment having been duly recorded in the Patent Office. Plaintiff Katherine Schwarz became president of the new corporation. Said corporation was dissolved in June, 1934, and prior thereto assigned the trade-mark to said Katherine Schwarz, but made no record of such assignment in the Patent Office until after the instant action; nor did said corporation part with its business by such transfer, but continued using the trade-mark till it was dissolved. Thereafter, plaintiff Katherine Schwarz and three others formed a new corporation under the name Louis Schwarz Corporation and sold razor blades under the old trade-mark in connection with the drug business, until, having become financially embarrassed, it conveyed its business, together with its merchandise and right to the corporate name, to defendant The Akron Drug and Sundries Company, which thereafter sold razor blades under the trade-mark registered in the Patent Office. *Held* that, inasmuch as the assignment made by the United Razor Blade Corporation to plaintiff Katherine Schwarz did not include the good-will of the business and was therefore invalid, defendant The Akron Drug Company had a superior right to the mark. 133

I, 4. INFRINGEMENT.

I, 4, § 2. *Conflicting Marks.*

(See also p. xxx, *post.*)

The following marks are *held* to conflict:

"Nu-Beauty Enamel" and "Nu-Enamel" 73
"Ranch Romances" and "Rangeland Romances" 322
"Borite" and "Oakite" 654

The following marks are *held* not to conflict:

"Chipso" and "Chase-O" 445
"Oxol" and "Oxydol" 445

In determining the decree of similarity between two trade-marks and labels, a comparison of the two ensembles, taken as a whole, is the only satisfactory method. 445

I, 4, § 3. *Goods of Same Descriptive Properties.*
(See also p. xxxii, *post.*)

The following are *held* to be goods of different descriptive properties:
A soap in powder form, and a chemical liquid cleanser and germicide 445
A water-softening preparation, and soap in granular form..... 445

I, 5. SUITS FOR INFRINGEMENT.

I, 5, § 2. *Parties and Liability.*
Appellant's predecessor entered into a contract with appellee's predecessor, The California Associated Raisin Company, whereby the latter agreed to refrain from the use of the trade-mark "Sun-Maid" on all products other than raisins and products containing same. *Held,* that, inasmuch as appellee has acquired the rights of the California Associated Raisin Company, it was bound to assume the burdens of the contract. 255

Where appellant Carl Pick, who in an earlier litigation had been enjoined from making and selling automobile hub-caps simulating appellee's trade-mark "B" and symbol, said injunction extending also against appellant Standard Products Manufacturing Company, subsequently transferred the assets of the latter company to appellant Pick Manufacturing Company, of which the said Carl Pick was controlling owner, such transfer *held* to have been made fraudulently and for the sole purpose of evading the consent decree. The decree of the lower court was, accordingly, affirmed. 562

I, 5, § 4. *Evidence.*

a. Res Adjudicata.
A decision of Mixed Tribunals in France as to the rights to a trademark, seized as German property during the war and sold to plaintiff, a French company, *held res adjudicata* in the United States as to plaintiff and German member of French company, party to proceedings in France, also as to United States corporation of which said German member is sole owner. 371

A decision of the Court of Customs and Patent Appeals in a related case between the parties *held* not binding on the court. 445

The test of infringement does not depend upon whether a purchaser will be confused when the packages of the commodity in question are laid side by side for comparison, but whether one with not a very clear recollection as to the real trade-mark is likely to become confused. 654

I, 5, § 5. *Defenses.*

a. Malicious Intent.

Plaintiff, owner of the trade-mark "Gold Dust'" used on washing powder, although knowing of defendant's prior use of the words "Silver Dust" on a similar preparation, registered the latter as a trade-mark in the Patent Office. Subsequently, plaintiff brought the present suit, charging defendants with infringement of its registered mark, but at the trial, abandoned any claim of infringement of its alleged "Silver Dust" trade-mark, basing same solely on the resemblance between its "Gold Dust" mark and defendant's use of "Silver Dust." *Held* that plaintiff, having brought suit for unjust, vexatious and malicious reasons, should fail and defendants be awarded the costs of the suit. 414

b. Estoppel.

In the case at issue, where the plaintiff assignee did not affix to the "Hekolith" goods the notice "Reg. U. S. Pat. Off.," and, moreover, did not give the defendant due notice of its ownership of the registration, *held* that plaintiff could not maintain a suit for infringement against the defendant. 236

Where appellant acquiesced in the unauthorized use of the trade-mark "Sun-Maid" in violation of contract for a long period, but such use by appellee was inconsiderable prior to January 1, 1929, and appellant two months thereafter notified appellee of the breach of contract, *held* there was no estoppel. 256

c. Laches.

In the case at issue, where plaintiff delayed seven months before filing motion, during which period defendant had, at great expense, issued several numbers of its magazine and planned for the July issue, *held* that the changes to be made in the title of defendant's magazine need not become effective until the July issue thereof. 322

I, 5, § 6. *Relief.*

b. Damages.

In equity, exemplary damages are never awarded in infringement cases, compensatory damages being the rule, regardless of the extent of defendant's wrong-doing. 475

c. Accounting of Profits.

Where the damages for infringement are not large enough to warrant an accounting, costs of same must follow the event, if plaintiff demands accounting. 371

I, 5, § 7. *Decree.*

a. Form.

In the case at issue, the motion was denied on condition that the defendant adopt some substitute for the words "Rangeland Romances," and avoid, in printing the letter "r" in said title, any simulation to the capital letter "R" used in plaintiff's title. 322

In the case at issue, defendant, when filling orders for cellophane was required to state the name of the manufacturer and nothing more. Defendant was permitted to use the word "cellophane" in its advertisements, provided it affixed the maker's name as a possessive. 513

In the case at issue, the decree of the lower court ordering defendant Stephen L. Stetson Co., to deliver up to plaintiff copies of letters to dealer customers *held* unnecessarily drastic and was, therefore, ordered stricken from the decree. 527

b. Modification.

A decreee in case of trade-mark infringement should include provision that either party may apply to court, on proper proof, for such modification as may seem just. 371

I, 5, § 9. *State Statutes.*

a. New York.

Under the law of the State of New York, no allowance can be made for counsel fees incurred in the litigation. 475

II. REGISTRATION OF TRADE-MARKS.

II, 5. The Application.

II, 5, § 1. *Applicant.*

The word "Hecolite," Anglicized form of the German word "Hekolith," which had been duly registered in the United States, could not be registered in the Patent Office by the exclusive sales agent in America until the registration of "Hekolith" had been assigned to it. 236

a. Foreigner.

An application to register a mark, based on a French registration and failing to allege use in the U. S., *held* rightly denied. 433

II, 5, § 4. *Statement.*

a. Use Required.

Where appellant made fourteen *bona fide* interstate sales of goods bearing its "Twenty Grand" trade-mark prior to filing application for registration, *held* that it had complied with the statutory requirements. 272

d. Description of Mark.

Where the mark as described did not correspond with the specimens as actually used, registration was denied. 227

II, 5, § 7. *Amendment of Application.*

Applicant first claimed continuous use "since Jan. 1, 1894," but subsequently amended by canceling said date and substituting therefor the statement that mark had been used "for ten years next preceding Feb. 20, 1905." Amendment *held* faulty, as asserting no present use of mark. 99

Motion to amend and request to set aside limit of appeal pending determination of motion denied, as beyond Commissioner's authority. 167

II, 5, § 9. *Division of Classification.*

A petition to cancel typewriters from the description of goods, since they are classified in Class 23, while the other goods are classified in Class 26, denied as leading to confusion. 667

II, 5, § 10. *Disclaimer.*

Applicant filed disclaimer of "Alaska" in mark "Alaska Twins," on frozen confections, after opposition by another. When the opposition was sustained and appeal taken, applicant sought to cancel disclaimer. Denied. 53

Held that an applicant for the registration of the name "American Steel & Wire Company" should not be allowed first to disclaim the words "Steel & Wire Company" and later the syllables "merican," leaving only the letter "A," as no authority exists for disclaiming a part of a word or certain letters thereof. 93

Petition to cancel disclaimer and substitute another *held* not permissible on appeal. 164

II, 6. Evidence.

II, 6, § 1. *Res Adjudicata.*

The fact that the Commissioner of Patents may have rendered another decision inconsistent with his decision in the case at issue affords no ground for reversing the decision here appealed from. 84

A decision of a district court as to the descriptiveness of a mark *held* not *res adjudicata* in a cancellation proceeding involving it. 228

II, 7. Stare Decisis.

Held that the construction of the phrase, "merchandise of the same descriptive properties" should be the same in *ex parte* proceedings as in those involving opposition, interference, or cancellation. 83

II, 8. Registrable Marks.

II, 8, § 1. *Color.*

A mark for nipples consisting of a pink band extending over practically the whole width of the collar, which constituted a substantial portion of the nipple, *held* unregistrable. 54

It has frequently been held that a mark is not registrable if it has color alone as its distinguishing feature. 87

Color may constitute a valid trade-mark if it is impressed or shown in a particular design. 600

A trade-mark consisting of a rectangular yellow panel bounded by a contrasting dark blue border, *held* entitled to registration. The fact that the panel enclosed other trade-marks and descriptive matter *held* immaterial. 600

II, 8, § 3. *Descriptive and Generic Terms.*
(See also p. xx, *ante.*)

The following marks are *held* to be descriptive:

"January" for hosiery 59
"Leak Proof" for roofing nails 61
"Quickmix" for a biscuit preparation intended to be quickly mixed 164
"76" for gasoline 176
"Vivid" for hectograph ink ribbons 179
"Can o' Gold" for motor lubricating oils 357
"Skintites" for women's undergarment 490
"Deesfuel" for "a petroleum fuel particularly adapted to Diesel engines" 501
"Downard" for bituminous paving material 663
"Bristlecomb" for hair brushes 665
"Dermalac" for skin lotion 667

Descriptive words may be included in a registration, the statutory ban running against trade-marks which consist only of such words. 67

The following marks are *held* not to be descriptive:

"Floating Power" for engine mountings 331
"Trophy" for paper drinking cups 355

II, 8, § 5. *Geographical Terms.*

The following words are *held* to be merely geographical:

"Manchester" on linseed oil 61
"American" on florist wire 93
"LaLouisiane" on distilled alcoholic liquors 180
"Niagara" on paints 668

II, 8, § 6. *Proper Names.*

The letters, "A. F. L.," being the initials of opposer's name, *held* unregistrable 672

II, 8, § 10. *Corporate Names.*

A trade-mark consisting of the name "American Steel and Wire Company," written in rather conventional lettering in double arcuate form, the word "American" and the words "Steel & Wire Company" below an elliptical paraph of the initial "A" of the word "American," *held* unregistrable, as it is a corporate name not distinctively displayed. 93

II, 8, § 20. *Conflicting Marks.*

(See also p. xxiii, *ante.*)

The following marks are *held* to conflict:

"Pencoil" and "Pennzoil" 13
"Omy" and "O M Y" and picture of three human heads 23
"Old Meadow" and "Meadow Gold" 38
"Cresco" and "Crisco" 43

"Kennel King" and "Ken-L-Ration" and "Ken-L-Biskit" 57
"TracTracTor" and "Tructractor" 58
"HyVis" and "Highpres" 102
"Langbrook" and "Langrock" 168
"Sure-Dou" and "Suregrow" 169
"Savoia" and coat-of-arms, and same name on rectangular background 170
"Dyanshine" and "Dishine" 172
"Ford" and "StanFord" 175
"Okay America" and Statue of Liberty, and "American" and Statue of Liberty 184
"Blurex" and "Rexall" 267
"Lubrichart" and "Chek-Chart" 300
"EA" and "EAM" 416
"Star Valley" and "Star Brand" 436
"Jean's Exquisite Hosiery" and "Miss Jean's" 437
"Palmolive" an "Palm" 438
"Pepsodent" and "Pearledent" 481
"Skinfit" and "Skintites" 488
"Beckacite" and "Bakelite" 544
"Beckolloid" and "Bakelite" 545

"White Horse" and picture of white horse, and "White Horse Ale" 548
"Beck-O-Lac" and "Bakelite"..... 553
"Rama-Fleece" and "Ram's Head"..... 587
"Strongheart" and "Red Heart"..... 587
"Tom Walker" and "Johnnie Walker"..... 640
"Uneed-A-Lax" and "Uneeda"..... 640

A trade-mark consisting of the letters "J" and "S," arranged in the form of a monogram, above which is a design of a cross resting on a ball or circle, with the word "Jesco" above, *held* to be deceptively similar to a mark consisting of a staff and superimposed S or serpent, the serpent being shown in the form of the letter "S" around the staff, so as to represent the staff and serpent of Esculapius. 40

A trade-mark consisting of a design formed by placing circumferentially of the lateral surface of the drum or barrel containing the goods a band of red at one end, a band of green at the other end, each color covering about one-third, and a band of white between them, of such lateral surface, *held* to be confusingly similar to a mark having substantially the same features, except that the upper one-third of the lateral surface of the drum is painted red instead of green. 89

The following marks are *held* not to conflict:

"Vapex" and "Vaporub"..... 29
"Cross Country" and "Coast-2-Coast"..... 63
A mark consisting of a fanciful picture of a woman's head with flowing hair and a picture showing same features differently presented 65
"Allied" and outline map of U. S. and words "Coast to Coast," and words "Cross Country," and outline map of U. S..... 98
"Budget Special" and "Tetley's Budget Tea"..... 217
"Bisquick" and "Quikmix"..... 222
"Biskies" and "Corn Krispies"..... 224
"Country Kist" and "Country Club"..... 225
"Bond Bread-Sunshine Vitamin-D" and "Sunfed"..... 278
"Skram" in form of cross, and "Bayer" in form of cross..... 290
"Red Star" and "Star Valley"..... 495
"Frigoplate" and "Frigidaire"..... 496
"Bon Ami" and "Shav-ami"..... 553
"Twinkles," and "Crinkle" and representation of windmill..... 666

A trade-mark consisting of a rectangular device in white whereon appears transversely a pyramid in black with the letters EA shown in white on the base (placed uppermost), the body of the pyramid being broken by two similar white lines therebeneath, the rectangular figure being enclosed by obtuse-angled triangles, the half sections of which are shown alternately in black and white, *held* not to be deceptively similar to a mark consisting of a rectangular device shown in white having a continuous black border, with a small rectangle in black shown in the upper left-hand corner and two L-shaped figures in black appearing therebeneath. 350

II, 8, § 21. *Goods of Same Descriptive Properties.*
(See also p. xxiv)

The following are *held* to be goods of the same descriptive properties:

Bath essences, bath oils and dusting powder, a preparation for the skin, coughs, colds, bronchitis, hoarseness, loss of voice, catarrh, and an iron preparation. 23

Food slicing machines, and vegetable slicers and food choppers. 64

Men's suits, topcoats, and overcoats, made from cloth or woolen fabrics, and boots and shoes made wholly or in part of leather fabrics or combinations thereof. 83

Aspirin tablets, and a preparation in powdered form for neuralgia, toothache, headache and grippe. 183

Gin and beer. 184

Tea and coffee, and cod fish, herring, mackerel and other fish. 217

Men's unionsuits, undershirts, and drawers, hosiery, suspenders, and hose supporters, and men's shirts and undershirts. 358

Bumpers and splash guards. 360

Lockets, cigarette cases, vanity cases, match safes and powder boxes, and soap. 417

Rouge, sun-tan oil, talcum powder and perfumes and lockets, cigarette cases, vanity cases, card cases, match safes and powder boxes, produced both from precious metals and from base metals and various alloys of metals; rouge boxes, compact boxes, powder containers, make-up boxes, compacts for both loose and cake powder, cold cream containers, perfume containers, lipstick holders, eyebrow pencils, and soap receptacles. 422

Ammeters and storage batteries. 494

Whiskey and ale. 548

Oil soluble varnish and synthetic resin. 550
Shaving cream and cleaning preparations, including tooth paste. 554

The following are *held* to be goods of different descriptive properties:
Petroleum, lubricating oils and greases and cooking fats. 43
A fabric cleaner, and mineral and lubricating oil. 96
Candied pop corn and fresh citrus fruits. 161
Gelatinized starches for retaining moisture in bakery products, and poultry and stock foods. 170
A polish for leather goods, and a cleaning compound for dishes, crockery and glassware. 172
Soaps and detergents and dry cleaning systems. 181
Canned milk and cream, and gin. 669
Watches and watch movements, clocks, tachometers, altimeters and other aviation instruments, and storage batteries. 670
A chemical solution for the removal of adhesive cement, and a corn remedy. 671

II, 8, § 22. *Grade Marks.*

The word "Buckeye" used by the senior party to an interference on gloves, *held* a grade mark. Registration was, therefore, awarded to the junior party. 439

II, 8, § 23. *Scandalous Matter.*

The word "Madonna" denied registration for wines, inasmuch as it would give offense to the conscience and moral feelings of many persons. 642

II, 8, § 24. *Affixation of Mark.*

In an application to register the word "Twindar" as a trade-mark for photographic lenses, registration was refused on the ground that the mark was not "applied or affixed to the goods," as required by Sec. 29 of the Act of 1905, but to a metal plate on the front of the camera. 20

II, 12. INTERFERENCES.

II, 12, § 2. *Evidence.*

Where one party to an interference established intrastate use of the mark prior to the first interstate sale by the other party, he was adjudged

to have prior claim, particularly as the intrastate sale was followed soon after by the interstate sale required by the statute. 184

Where evidence presented by the senior party was deemed so fraudulent as to confer no trade-mark ownership, the junior party was awarded the registration. 361

II, 13. Oppositions.

II, 13, § 1. *The Opposer.*

Although opposer's brief might well be stricken from the files of the court, filing of the said brief as to the descriptiveness of the said mark was allowed. 321

Inasmuch as the opposer did not appeal from the decision of the Examiner dismissing his notice of opposition, *held* that opposer was not a proper party to appeal to the court on the question of the descriptiveness of appellant's mark. 321

II, 13, § 2. *Notice.*

b. Time of Filing.

Where appellant, sixty days after date of the Commissioner's decision dismissing his opposition, filed a notice of appeal to the Court, together with a stipulation by counsel of the parties that the notice of appeal might be accepted as though timely filed, and notwithstanding that the Assistant Commissioner granted an extension of thirty days in the matter, *held* that, inasmuch as the statute fixes a limit of forty days for the filing of appeals, and opposer had failed to file notice of appeal within such period, the Commissioner's decision should be affirmed. 442, 659

II, 13, § 10. *Evidence.*

In an opposition proceeding it is incumbent upon the opposer to overcome by proof the *prima facie* case of trade-mark use arising from the sworn application, supported by labels showing the trade-mark as actually used. 278

The testimony of opposer's witness to the effect that he did not know that applicant was engaged in the baking business *held* not sufficient to overcome the *prima facie* case arising from the sworn application and the accompanying labels. 278

Although the evidence adduced to prove that appellant's use of its mark antedated appellee's use of its mark was conflicting, the fact that one of appellee's witnesses referred to certain advertisements of appellant featuring its trade-mark as far back as 1917, *held* to prove appellant's use prior to that of appellee's, which dated only from 1931. 481

II, 13, § 11. *Review of Decision.*

In opposition proceedings, the court does not concern itself with any question relating to the validity of opposer's registration. 89

Where registration owned by opposer was pleaded in notice of opposition, a petition that the application be remanded to the Examiner denied, as it would deprive applicant of opportunity to take testimony. 503

Where the Commissioner refused to register a mark by reason of a decision rendered the same day in another opposition filed by Borden Cheese Co., Inc., a petition for reconsideration was granted on the ground that an *ex parte* rejection of the application might make it necessary to take two appeals to the U. S. C. C. P. A. to obtain an adequate review of decision in the Borden case. 504

A petition to reopen on the grounds of alleged invalidity of opposer's registration denied. 505

Where the relevancy of certain findings of fact from the trial of a related case was not established, a petition to remand the issue to the Examiner was denied. 505

On a petition for rehearing in an opposition proceeding, in which the use by the court of the words "casual observer" in a certain context was objected to by appellant, these words, together with the portion of the original opinion to which objection was made, were withdrawn by the court on the ground that the said portion might be interpreted as in conflict with prior decisions involving a question of law; but the petition was denied. 584

II, 15. Proceedings for Review.

Applicant's petition for rehearing, comprising merely an assignment of errors, was denied. The remedy is by way of appeal. 51

II, 17. CANCELLATION.

II, 17, § 4. *Pleading and Practice.*

The fact that appellee knowingly permitted appellant to use its mark in a restricted area for a long time, *held* not to constitute laches such as to be a defense in a cancellation proceeding. 13

II, 17, § 5. *Evidence.*

a. Res Adjudicata.

Decisions of federal courts in cases parallel with that at issue, giving a later user the right to use its mark in a restricted area, *held* to have no application to cancellation proceedings in the Patent Office. 13

It is well established that, in cancellation proceedings, damage must be shown in order to sustain the cancellation. In the case at issue, therefore, since the two marks were held not to be confusingly similar, no damage could result. 29

Where petitioner for the cancellation of the registration of the trade-mark "Gold Bond" for shoes, alleged that it had used the mark in advertising and had filled orders for "Gold Bond" shoes prior to appellee's first use thereof, but did not allege any actual trade-mark use of said words in its petition, *held* that appellant had failed to show sufficient grounds for cancellation. 293

Where evidence proved that registrant parted with mark before petitioner appropriated it, cancellation was denied. 296

Petitioner having no interest in mark at the time it was registered, his petition was properly dismissed. 297

An order of cancellation by the United States Court of Customs and Patent Appeals *held res adjudicata* in a suit between the same parties in a federal court; and defendant-counterclaimant's motion to amend the complaint was allowed. However, defendant's prayer for a court order canceling plaintiff's trade-mark registration was denied, since one who has been successful in one forum cannot ask another court for the relief he has already obtained. 410

An order permitting petitioner to take testimony in support of its petition, although registrant waived right to file an answer, *held* proper. 588

Where evidence showed that petitioner for cancellation did not own its alleged mark, it was not injured by its registration, and cancellation was refused. 589

Certified copies of assignments of a trade-mark registration as recorded in the Patent Office *held* not competent to establish ownership. 636

Where the omission of evidence at final hearing was due to inadvertence of counsel, appellant's motion to reopen was granted. 638

A petition to dismiss an appeal where same was filed without notice to other party was refused. 663

II, 20. State and Local Statutes.

II, 20, § 1. *Kansas.*

The statutes of the State of Kansas (R. S. 81-103 and R. S. 1933 Supp. 65-706) making it unlawful to refill containers bearing a trade-mark registered under state statutes, *held* valid, as being pursuant to the police power of the state. 325

The unauthorized use by defendants of milk bottles bearing appellant's trade-marks, and the refilling thereof *held* a violation of the statute and was enjoined. 325

II, 21. Print and Label Registration.

A label comprising the notation "May-A-Tone" in plain block type, following which is a statement of the ailments for which the medicament is to be used together with directions for its use, and names of manufacturer and distributor. All are in conventional type and arrangement and inclosed within a black line border, *held* unregistrable as lacking originality. 65, 103

II, 22. Notice of Registration.

Where appellee used the notation "Reg. U. S. Patent Office" in connection with its trade-mark, when only a portion of the mark had been

registered, *held* that there was no such fraudulent use of its mark as to make applicable the doctrine of "unclean hands." 24

II, 23. Registration by Bill in Equity.

On refusal of registration of a trade-mark, applicant brought suit under R. S. 4915 and the court ordered registration. The Commissioner then published the application and opposition was filed. The Commissioner denied the motion to dismiss the opposition and the Examiner granted the motion to suspend the proceedings pending determination of a suit between applicant and opposer in the United States District Court. Applicant then filed petition in the Supreme Court of the District of Columbia for a writ of mandamus to compel the Commissioner to register the mark. *Held* that the resort to equity was premature, as the matter was eventually appealable from the Commissioner and mandamus cannot take the place of an appeal. 79

In a trade-mark opposition the appeal from a decision of the Commissioner of Patents lies to the Court of Customs and Patent Appeals and, after an unsuccessful appeal to said Court, the applicant may resort to an independent bill in equity against the Commissioner. 80

In the case at issue, where no question of priority was involved, a District Court *held* not eligible to review proceedings in the Patent Office under Section 4915. 231

Appellant filed application to register certain trade-marks and the Commissioner of Patents denied registration on the ground of descriptiveness, whereupon appellant filed a bill in equity under Section 4915 R. S., and the bill was dimissed for want of jurisdiction. *Held* that, in suits involving descriptiveness of a mark, the Commissioner is a necessary party defendant to the action, and, inasmuch as he is a non-resident of the district, the bill was properly dismissed. 231

The remedy by appeal under Section 4915 R. S. from a decision of the Commissioner of Patents relating to trade-marks *held* alternative, rather than cumulative. When, therefore, an applicant is not satisfied with the Commissioner's decision, he may appeal to the United States Court of Customs and Patent Appeals or file an appeal in equity, but may not do both. 600

III. UNFAIR COMPETITION.

III, 1. Nature and Basis of Wrong.

III, 1, § 1. *Definition.*

The term "unfair competition" presupposes competition of some kind. However, it is now the tendency of the courts to widen the scope of protection, in unfair competition and to hold that it is not confined to actual market competition. 209

The palming off of one's goods as those of another is not the sole test of unfair competition. 558

III, 1, § 4. *Prior Right to be Protected.*

It is the policy of the law to protect the business of the first person to enter the field under a given name to the extent necessary to prevent fraud upon the business and the public. 651

III, 1, § 6. *Deception.*

Granting the truth of plaintiff's claim that defendant wrongly represented its "Excella" face powder as having a buttermilk base, such statements, as merely metaphorical, *held* no ground for an injunction. 247

Although there was little evidence of actual deception of consumers, defendant's conduct raises the presumption that there would be. 303

III, 1, § 7. *Damage.*

Where one passes off his goods, services or business, as those of another, equity will intervene to protect the good-will and business reputation of the latter from any injury liable to be caused thereby. 209

III, 2. Unfairness in Competition.

III, 2, § 1. *Imitating Appearance of Article.*

The use by defendant, Automatic Sales Producers, Inc., of a post card folder closely resembling in shape, dimensions, and features the folder put out by the plaintiff, *held* unfair competition, especially as the elements imitated were non-functional. 566

The use by defendants in the sale of hair tonic of a color, odor, and label similar to those distinguishing plaintiff's "Lilas de France" or "Lilac

Vegetal" product, *held* unfair competition, and the preliminary injunction was made permanent. 615

Plaintiff had, since the year 1865, sold in the United States a hair tonic under the name "Eau de Quinine" in bottles bearing labels of distinctive color and design. Defendants later put on the market a hair tonic, deceptively similar in color and odor, also in the label used, to those in use by plaintiff. Defendants *held* guilty of unfair competition. 615

III, 2, § 3. *Imitating Packages and Containers of Goods.*

The sale of goods differing somewhat in composition and use, and sold in different size packages, employing, in general, similar colors but differing in wording and arrangement *held* not to be unfair competition. 445

Plaintiff had used since 1900 the name "Ergo-Apiol" as a trade-mark for a pharmaceutical preparation, which it sold in yellow tin boxes, of twenty capsules each, arranged in a nest inlay. Defendants, since 1926, sold capsules of ergot and apiol, at first marketing same in a square cardboard box containing twenty-four capsules. In 1932 they changed the name of their product to "Ergot-Apiol" and the container from a square cardboard box to one of yellow tin; also their former criss-cross inlay to a nest inlay, nearly identical with that used by plaintiff. Defendants' selling agent, moreover, wrote upon their printed price list "Ergot-Apiol capsules, similar boxes to Smith's." Defendants *held* guilty of unfair competition. 479

Where the get-up of defendants' package both in size, shape, color and design, was similar to plaintiff's package, but defendants alleged that their trade-mark "Borite" was adopted in good faith, *held* that such intents may not be separated, but must be taken together and protection be denied to both as a unit. 654

III, 2, § 4. *Imitating Labels.*

Where appellant had, since the year 1922, sold its lard and meat products in containers bearing labels featuring an oval medallion and distinctive combinations of stripes and lettering, some in blue and white, others in red and yellow, the subsequent adoption by appellee of labels featuring a medallion and stripes of different widths, but in color and arrangement closely similar to those in use by plaintiff, *held* liable to deceive customers and hence unfair competition, particularly as appellant's labels and cartons had become well known to the public. 303

The use by defendants of labels which, in size, shape, design, and color, closely resembled that long in use by plaintiff, together with their adoption of the use of the word "Borite," after plaintiff had long used the word "Oakite," on similar products, *held* unfair competition. 655

III, 2, § 5. *Substitution.*

Where plaintiff, which put out face powder under the trade-mark "Evening in Paris," sought to enjoin defendant from selling customers its "Excella" face powder when plaintiff's powder was called for, *held* that defendant had the right to push the sale of its face powder against defendant's powder by honest representation and persuasion. 247

After a court decision holding defendant's device an infringement of plaintiff's patent, defendant changed the internal structure of same but retained its shape, color, marking, and appearance, and sold such changed device as being the same as the earlier infringing one. *Held* unfair competition, and the sale of the device was enjoined, except under representations plainly showing that it was not the same, but wholly different, from the former infringing device. 558

III, 2, § 6. *Names.*

a. Personal Names.

While one cannot be denied the legitimate use of his name in business, he cannot use it so as to invade the rights of others bearing the same name. 187

Where plaintiff had, through use for over fifty years, made the name "Stetson" distinctive of hats of its manufacture, throughout the United States and in many foreign countries, the use by defendant Stephen L. Stetson Company, Ltd., of advertising matter, in trade papers and on signs displayed by its retailers, connecting its business with that of plaintiff in such a way as to mislead prospective purchasers as to the origin of the goods, *held* unfair competition. 187

In 1920 W. B. Fishburn organized W. B. Fishburn, Inc., for the purpose of conducting a cleaning and dyeing business in Fort Worth, Tex., and in 1933 said business was adjudged bankrupt and appellant was appointed receiver to carry it on, W. B. Fishburn himself taking bankruptcy and ending his connection with W. B. Fishburn, Inc. Early in 1934 W. B. Fishburn, with the other defendants, formed the defendant corpora-

tion and engaged in business in competition with appellant. As there was evidence of confusion among patrons as to the identity of the respective businesses, appellee was ordered to distinguish its name from that of F. W. Fishburn, Inc., by inserting the words "not connected with the old W. B. Fishburn, Inc.," directly after its own name in all advertising matter; and the Southwestern Bell Telephone Company was ordered to insert the same words after appellee's name in its directories. 233

In an action brought by the administrator of the estate of Florenz Ziegfeld to restrain defendants from the use of the words "The Great Ziegfeld" as the title of a motion picture *held* that no injunction should issue, inasmuch as all business good-will possessed by the said "Ziegfeld" was of a personal nature and ceased at his death, with the exception of the interest and good-will to the name "Ziegfeld Follies" which was assigned to his widow. Moreover, to grant the injunction would be to cause great loss to defendants without corresponding benefit to plaintiff. 570

Plaintiff and its predecessors had since the year 1881 been putting out a product known as "Westphal's Auxiliator," which product had become widely and favorably known. The corporate defendant began in 1922 to manufacture and sell a hair tonic of the same color as the Westphal preparation and in 1931 obtained all right, title, and interest to the name "Westphalia," under which one of its predecessors, the Westphalia Manufacturing Company, had carried on a business in the manufacture of hair tonic, having taken into partnership one Eric Westphal, and thereafter using the word "Westphal" on its products. *Held* that defendant should be enjoined from the use of the name "Westphal" on preparations for the hair, inasmuch as such name had acquired a secondary meaning denoting plaintiff's products exclusively. Moreover, the use by defendant of the word "Westphal" coupled with the word "Westphalia" placed it in a position where it was not entitled to claim the full competitive rights inuring to an innocent newcomer. 618

Under a Massachusetts statute a man has the right to control the business use of his name. Where Louis Lowenstein withdrew from a corporation formed by himself and brother under the name "Lowenstein's, Inc.," for the business of buying and selling used furniture, he was *held* not entitled to enjoin the use by a new corporation, successors to "Lowenstein's, Inc.," of the name "Lowenstein," inasmuch as plaintiff did not

prove that the name, the use of which he sought to enjoin, was in fact his name. 631

A name long used by a business firm becomes an asset to the business and a third party may not use such name in advertisements in such a way as to confuse the public to the disadvantage of the firm first using it. 651

b. Corporate Names.

The general rule is that, as between conflicting claimants to the right to use the same name in the same area in connection with the sale of the same products, priority of appropriation determines the question of right. 126

Where plaintiff, Western Auto Supply Company, was incorporated in 1914 and has since carried on an extensive business in automobile supplies and accessories under said name, also as "Western Auto Stores," *held* that such names have acquired a secondary meaning as indicating exclusively plaintiff's product and business. 126

Where, after plaintiff, incorporated in 1914, had extended its business in automobile supplies into every state in the Union, and had identified such supplies and business with its corporate name, Western Auto Supply Company, the adoption and use by defendant in a similar business of the name Western Auto Supply Company, *held* unfair competition. 126

The use by appellant in its corporate name and as a trade-mark for a whiskey of its manufacture of the name "Churchill Downs," associated, in case of the trade-mark, with a picture of the racing-track at Churchill Downs, Ky., *held* unfair competition, inasmuch as the right of appellee, Churchill Downs, Inc., to the exclusive use of its name is property, in a qualified sense, which equity will protect. 210

Where plaintiff, a Delaware corporation, had for several years been engaged in the sale of coal under the name "Koppers Coal," the adoption and use by defendant of the corporate name "Koppers Fuel Service Corporation," *held* unfair competition. 265

Where defendants, operators of a pharmacy in Philadelphia, adopted as a name therefor the words "Macy's Drug Store," although none of defendants bore the name Macy, *held* that they were guilty of unfair com-

petition with plaintiff, particularly as it appeared that the word "Macy's" had acquired a secondary meaning as referring to plaintiff's business. 443

The use by appellee of the statement "Original and Genuine 'Enders' (or 'Keen Kutter')" with appellee's name appearing in small letters *held* unfair competition, especially as evidence of actual confusion was shown. 507

The adoption and use by defendants of the name "House & Building Insulation Company" several years after the plaintiff was incorporated as Home Insulation Company, both companies being engaged in the sale of insulation materials for buildings, *held* unfair competition. 575

c. Trade Names.

Where plaintiff had used for many years the trade-names "Queen City Credit Company" and "Queen City Credit Clothing Corporation," the use by the newly-organized defendant of the name "Queen City Credit Clothing Corporation" *held* unfair competition, inasmuch as deception and consequent injury to plaintiff were likely to result, and as plaintiff was not restricted to the use of its corporate name. 676

d. Literary and Dramatic Titles.

In the case at issue, defendant was enjoined from using the designation "Ace-G-Man" in the title of its magazine in any form resembling plaintiff's magazine title. 478

Inasmuch as plaintiff did not possess proprietary rights that were being destroyed, injured or interfered with by defendants, he was not entitled to restrain a non-competing use of the imaginary character known as "Raggedy Ann" by defendants, who manufactured a doll which closely resembled plaintiff's and sold it under said name. 532

The use by defendants of the word "Inflation," and subject matter dealing therewith in a motion picture film produced and shown shortly after plaintiffs had shown a motion picture under the same title *held* not unfair competition, as there was no element of fraud involved, or any confusion to the public. 542

III, 2, § 7. *Descriptive Terms.*

Appellee had the right to make an enamel product and distinguish it from an old product by calling it *new*. Moreover, it might, under certain

circumstances, use a phonetic method of spelling "new," but it could not adopt for phonetic spelling or use any combination of words which had the appearance, purpose and effect of passing off its goods as and for another's. 74

The word "Realistic" *held* to have acquired a secondary meaning as distinguishing plaintiff's goods. Defendant, therefore, when using the word in a descriptive sense in connection with hairwaving was ordered to indicate that its hairwaving was not effected by the use of plaintiff's patent or appliances made by plaintiff. 463

The designation "G-men" *held* descriptive, as having a popular source, and, therefore, not eligible for exclusive appropriation as a trade-mark. 478

III, 2, § 9. *Mark of Patented Article.*

Where appellant's patent on a process for shredding wheat, and its design patent of the representation of a whole wheat biscuit had both expired, *held* that appellee in using the words "Shredded Wheat" and a similar design on a like preparation was not guilty of unfair competition, inasmuch as the said words and design became *publici juris* on the expiration of the patents. Moreover, appellee's use of these features was differentiated from those used by appellant in such a way as to avoid deception of the public. 123

III, 2, § 10. *Advertising.*

The use by defendant in its advertising of statements that its folder was patented and all who used a similar folder would be prosecuted *held* a palpable fraud, inasmuch as no patent on the folder existed. 566

Defendants inserted in daily newspapers circulating in New York City and vicinity the following advertisement: "B. V. D. Swim-Fast All-Wool Swim Suits, Regularly up to $5.00, Now $2.74," also "Sensational Sale. 2,000 All-Wool B. V. D. and Swim-Fast Suits, Values up to $5.00—$2.74," notwithstanding that defendants were prepared to supply only swim suits intended by complainant to sell at the retail price of $3.88. Inasmuch as the said advertisements would induce in the public the opinion of a depreciated valuation of plaintiffs' merchandise and would divert business from them as a result, *held* that defendants should be enjoined from such practices. 609

III, 2, § 11. *Trade Secrets.*

As secret processes constitute a property right, their owner cannot be compelled to disclose them in litigation, except in case of urgent necessity, and then only under reasonable protection against disclosure. The examination of owner before trial is not in keeping with such procedure. 153

Plaintiff alleged that defendant employed one, Warburton, eleven years after he left plaintiff's employ, and conspired with him to obtain and use plaintiff's trade secrets. The defendant alleged that it uses its processes independently developed by Warburton after he left plaintiff's employ. In examination before trial, plaintiff may not demand that defendant's employees give up its secret formula, but must first prove conspiracy. However, plaintiff may inquire whether defendant, since employing Warburton, put on the market a new product competing with the plaintiff's product, and if so, may inquire as to the formulas for comparison with plaintiff's formulas, but only on condition that plaintiff disclose the latter. 153

III, 2, § 12. *Federal Statutes.*

a. Trade Commission Act.

In an appeal from an order of the Federal Trade Commission requiring defendant to "cease" and "desist" from the use of the word "Indian" on jewelry not to a substantial extent made by Indian workmen, *held* that the words "press cut and domed blanks" appearing on the articles so made sufficiently showed that a machine was used in making the jewelry, in accordance with the Commission's orders. 555

An unfair method of competition which is against public policy may be stopped by the Federal Trade Commission for that reason alone. 643

Held that the Federal Trade Commission had jurisdiction to issue cease and desist orders against complainants, magazine publishers, who had combined together to prevent retailers, who sold back numbers of said magazines to second-hand dealers, from dealing in complainants' magazines. 643

Held that the said magazine publishers were entitled to take concerted action to prevent the sale of their new magazines to dealers who had sold their "coverless returns," for which they had paid nothing. 643

The Federal Trade Commission may issue cease and desist orders whenever methods of competition are unfair in interstate commerce and

their prevention is in the public interest. It may not, however, properly act to prevent those trade practices which merely are offensive to proper standards of business morality. 643

III, 2, § 14. *Price Maintenance.*

Price cutting is permitted to a retailer, even though it might result in injury to a competitor. However, it is unfair in a competitor to put a cut price upon goods and at the same time to make statements regarding the goods so offered which are inaccurate and misleading. 609

One magazine publisher may sell his magazines as he chooses, but two or more may not combine in the sale of their magazines in such a way as to harm the public or the persons affected by such action. 643

III, 2, § 18. *Misuse of Another's Trade-Marks.*

Plaintiff, for many years a manufacturer of a dessert powder called "Junket," *held* entitled to an injunction *pendente lite* restraining defendant from marketing its similar powder "Junketing Powder." Defendant, however, was permitted to state on its labels that its powder could be used in making "junket." 11

Where plaintiff, exclusive selling agent in the United States of dentures put out by it under the names "Hekolith" and "Hecolite," had identified said trade-marks with its goods in the mind of purchasers, the sale by defendant under the "Hekolith" trade-mark of dentures obtained by him from the German manufacturer *held* unfair competition. 236

III, 2, § 19. *Other Instances.*

Complainant, a membership corporation engaged in the gathering through, and dissemination to, its members, of news items throughout the United States, supplied news to three newspaper members located in the State of Washington. Appellee, a radio station located in the same circulation area as appellant's said newspapers, engaged in broadcasting radio and advertising features, selected certain news items from appellant's newspapers and broadcast them before the newspapers reached their subscribers. *Held* that such pirating and broadcasting of plaintiff's news was unfair competition, inasmuch as the news so pirated became stale by the time appellant's newspapers were received by its subscribers, resulting in loss of subscribers and advertising income. 107

Defendant, Texas Company, contracted with Ed Wynn, well-known radio comedian, to appear in a series of broadcasts designed to advertise

its products, said programs to be broadcast by defendant, the National Broadcasting Company, Wynn to write or otherwise furnish his script, in which defendant Graham McNamee had a speaking part. Plaintiff, after said broadcasts, published the contents of each script, featuring the names of said Wynn and McNamee, in a magazine called *Uproar* which it sold at ten cents a copy. *Held* that the decision of the District Court, enjoining plaintiff from issuing said publication on the ground of injury to the Texas Company should be affirmed, but the decree modified by adding to the end thereof the words, "in any way which injures or interferes with the benefits which the Texas Company might derive from its advertising under its contracts with Wynn." 363

Plaintiff had for many years done business throughout the country and in and near the city of Los Angeles under the name "The Hoover Company" and "Hoover Suction Sweeping Company." The listing of defendants, not connected with plaintiff, in the Los Angeles classified directory under the name "Hoover Vacuum Cleaner Repairing," shown in large type, *held* unfair competition. 651

III, 3. Suits for Unfair Competition.

III, 3, § 1. *Jurisdiction.*

In a suit charging infringement of a registered trade-mark, the court will hear an unfair competition complaint joined therewith, even though the trade-mark is found invalid. 74

III, 3, § 2. *Parties and Liability.*

In the case at issue, Hutt & Wasserman, Inc., which manufactured hats for defendant under a service agreement *held* a proper party to the suit. 187

III, 3, § 3. *Pleading and Practice.*

On a motion to dismiss a bill of complaint every reasonable intentment in favor of the bill must be taken by the court. 31

On motion for preliminary injunction, plaintiff's showing as to its long established business, status of its product and causes resulting in the alleged conditions were admitted, when not denied in opposing affidavits. 265

In an action for alleged unfair competition and infringement of plaintiff's trade-mark, where defendant filed an answer and set up a counterclaim and plaintiff filed interrogatories alleged to be in support of its defense of abandonment of defendant's trade-mark, which interrogatories were objected to by defendant on various grounds, *held* that the fact that the interrogatories also relate to matters material to the cause of the interrogated party will not defeat the right of discovery. 471

III, 3, § 4. *Evidence.*

The findings of a chancellor on conflicting testimony are presumptively correct and will not be overthrown unless it is clear that some serious mistake has been made in consideration of the evidence. 247

b. Acts of Agents.

In the case at issue, where the evidence as to alleged slandering of plaintiff's product by defendant's salesmen was conflicting and, moreover, plaintiff's "shopper" employed to obtain such evidence, failed to identify salesmen responsible for the alleged statements by name, the decree of the lower court dismissing the complaint was affirmed. 247

III, 3, § 5. *Defenses.*

a. Plaintiff's Misconduct.

The fact that plaintiff once or twice in 1931 wrongly referred to its folder as "patented" *held* not sufficient to make applicable the doctrine of "unclean hands," as said doctrine is applicable to the situation existing at the time the suit was brought in 1934. 566

d. Use by Others.

The use of the name "Churchill Downs" by others is no shielding defense to appellee's use thereof. 210

III, 3, § 6. *Relief.*

b. Injunction.

x. *Preliminary.*

In a prior action, appellant had obtained a court decree requiring The Oneida Community Company, Ltd., to distinguish its silverware bearing the name "Rogers" from plaintiff's silverware by certain qualifying terms, and to require its retailers to use the same distinguishing notices in re-

selling the goods. *Held* that defendant was not bound by the said decision, and because of this and other circumstances a preliminary injunction was denied, particularly in view of expectation of a speedy trial. 310

c. Accounting of Profits.

Where, in an action for trade-mark infringement and unfair competition, a decree had been entered by the court granting plaintiff the injunction prayed, but omitting any reference to damages, *held* that reference for accounting should cover not only the issue of damages and profits, but also include any evidence which would justify the allowance of exemplary as well as compensatory damages. Said decree should also permit appellant to introduce evidence tending to establish laches, estoppel or any other defense which would bar, or mitigate the amount of damages which appellee might otherwise recover. 598

d. Damages.

The violation by the defendant of an injunction in an unfair competition proceeding *held* not to defeat his right to recover from the plaintiff such damages as he had sustained. 157

y. *Final.*

Where defendants had discontinued the practices complained of but not until the filing of the suit, and, moreover, maintained that such practices were unobjectionable, *held* that an injunction should issue, as it could not injure the defendants and might protect the plaintiffs. 609

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